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Shared natural resources

Paper on oil and gas prepared by Mr. Chusei Yamada, Special Rapporteur on shared natural resources

1. The present informal paper has been prepared for the members of the Working Group on Shared Natural Resources, which might be established at the sixty-first session of the Commission to consider the question of oil and natural gas within the wider topic of shared natural resources.

2. The Commission began its work on shared natural resources in 2002. It was generally understood that the topic covered three kinds of natural resources: groundwaters, oil and natural gas, as indicated in the syllabus prepared by Robert Rosenstock.[1] The Commission adopted a step-by-step approach, beginning with groundwaters. It completed the second reading of the draft articles on the law of transboundary aquifers in 2008 and transmitted them to the General Assembly with the recommendation that the Assembly (a) take note of the draft articles in a resolution and annex them to the resolution, (b) recommend to States to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the articles and (c) consider at a later stage the elaboration of a convention on the basis of the articles.[2] By adopting its resolution 63/124, the General Assembly acted along the lines of the Commission's recommendation.[3]

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[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), annex.

[2] Ibid., *Sixty-third Session, Supplement No. 10* (A/63/10), para. 49.

[3] In resolution 63/124 the General Assembly:

> 4. *Takes note* of the draft articles on the law of transboundary aquifers, presented by the Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action;
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> 5. *Encourages* the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of these draft articles;

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3. During the Commission's work on transboundary aquifers, questions on the possible work on oil and natural gas and its relevance to the work on groundwater were often raised not only in the Commission but also in the Sixth (Legal) Committee of the General Assembly. In 2007, while the Commission was awaiting comments and observations from States on its first-reading draft articles on the law of transboundary aquifers, which had been adopted in 2006, it received the fourth report of the Special Rapporteur (A/CN.4/580). The report covered the questions of oil and natural gas, including a preliminary study of oil and natural gas resources, their similarities and dissimilarities with groundwaters, management practice and environmental implications. Following the plenary debate, the Working Group on Shared Natural Resources, chaired by Enrique Candioti, was established to consider various issues raised in the report.

4. On the basis of considerations by the Working Group,[4] the Commission decided to proceed to the second reading of the law on transboundary aquifers independently of any possible work on oil and natural gas, it being understood that the latter two resources would be considered together, and also to circulate a questionnaire on oil and natural gas to States. Such a questionnaire would, inter alia, seek to determine whether there were any agreements, arrangements or practice regarding the exploration and exploitation of transboundary oil and natural gas resources or for any other cooperation for such resources, including maritime boundary delimitation agreements, as well as unitization and joint development agreements or other arrangements.

5. Pursuant to the decision of the Commission, the secretariat of the Commission circulated the following questionnaire, to which 18 States have so far responded:[5]

> 1. Do you have any agreement(s), arrangement(s) or practice with your neighbouring State(s) regarding the exploration and exploitation of transboundary oil and gas resources or for any other cooperation for such oil and gas?
>
> 2. Are there any joint bodies, mechanisms or partnerships (public or private) involving exploration, exploitation or management of transboundary oil or gas?
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> 3. If the answer to question 1 is yes, please answer the following questions on the content of agreements or arrangements and regarding the practice:
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> (a) Are there any specific principles, arrangements or understandings regarding allocation or appropriation of oil and gas, or other forms of cooperation? Please provide a description of the principles, provisions, arrangements or understandings.
>
> (b) Are there any arrangements or understandings or is there any practice regarding prevention and control of pollution or regarding other

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6. *Decides* to include in the provisional agenda of its sixty-sixth session an item entitled "The law of transboundary aquifers" with a view to examining, inter alia, the question of the form that might be given to the draft articles.

[4] See A/CN.4/L.717. See also *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10), paras. 178-183.

[5] Algeria, Argentina, Australia, Austria, Bahamas, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Hungary, Ireland, Republic of Korea, Mali, Mauritius, Oman, Netherlands, Tunisia and Turkey (see A/CN.4/607).

environmental concerns, including mitigation of accidents? Please provide further description.

4. Please provide any further comments or information, including legislation, judicial decisions, which you consider to be relevant or useful to the Commission in the consideration of issues regarding oil and gas.

5. Are there any aspects in this area that may benefit from further elaboration in the context of the Commission's work? Please indicate those aspects.

6. Although it will be necessary to encourage the further submission of responses to the questionnaire from the States concerned, the replies so far received are useful in identifying the problems of oil and natural gas. There exist many bilateral agreements and arrangements between the States concerned and between their national oil and gas companies. The texts of these agreements should be carefully analysed. They generally provide for cooperation, exchange of information, effective exploitation, equitable sharing, protection of environment, etc. There also exist joint mechanisms but they are as yet rather informal and embryonic. Unlike the case of transboundary aquifers, oil and natural gas reserves are often located on the continental shelf. In such situations, the maritime boundary delimitation is the prerequisite for determining the existence of transboundary resources. However, most of the coastal States have the firm position that that is a matter to be decided solely by those States concerned. Some States also hold that the question of oil and natural gas is bilateral, highly technical and politically sensitive and that it must be dealt with case by case. Accordingly they urge the Commission to take a cautious approach.

7. States made oral comments on the possible work by the Commission on oil and natural gas during the debate in the Sixth Committee in 2007 and 2008. One State consistently held that the work on groundwater and oil and natural gas must be conducted together.[6] Some other States supported the Commission's approach of treating groundwater independently of oil and natural gas, but their positions on the possible work on oil and natural gas were diverse. Some States doubted the need for any universal rules on oil and natural gas and advised the Commission not to proceed with the codification work,[7] pointing out mainly that the question of oil and natural gas is bilateral, highly technical and politically sensitive and that it must be dealt with on a case-by-case basis, while also stressing the need to avoid any encroachment into questions of maritime delimitation. Some other States favoured the Commission proceeding with the work.[8] Yet others were not decided but favoured either further study or a cautious approach.[9] Some States also stressed the importance of the concept of unitization, which implies the consideration of the

[6] The Netherlands; see A/C.6/62/SR.24 and A/C.6/63/SR.19.

[7] The Nordic countries (A/C.6/62/SR.22 and A/C.6/63/SR.16), United Kingdom of Great Britain and Northern Ireland (A/C.6/63/SR.16), Australia (A/C.6/63/SR.17), Canada (A/C.6/63/SR.17), Greece (A/C.6/63/SR.17), United States of America (A/C.6/62/SR.22 and A/C.6/63/SR.18), Islamic Republic of Iran (A/C.6/62/SR.25).

[8] Poland (A/C.6/63/SR.17), Uruguay (A/C.6/63/SR.18), Democratic Republic of the Congo (A/C.6/62/SR.24).

[9] China (A/C.6/62/SR.22), Republic of Korea (A/C.6/63/SR.16), Germany (A/C.6/63/SR.16) Mexico (A/C.6/63/SR 17), Russian Federation (A/C.6/63/SR.18), Lebanon (A/C.6/63/SR.18), Italy (A/C.6/62/SR.22), Romania (A/C.6/62/SR.24), Venezuela (A/C.6/62/SR.25), New Zealand (A/C.6/62/SR.25).

transboundary oil and natural gas field as one unit with a single operator but where earnings and costs are shared.[10]

8. In the absence of consensus among States on the question of possible work on oil and natural gas, it is the view of the Special Rapporteur that the Commission must make further studies before making any definitive decision whether to proceed with the codification process of oil and natural gas. It is advisable that the Commission establish a programme of work for the studies for the next several years. The Commission would need further inputs from States. The Commission must also consider ways and means to seek assistance from the relevant international organizations, such as the Economic Commission for Europe, and from scientific, technical, administrative, commercial and legal experts.

[10] The Nordic countries (A/C.6/63/SR.16), Mexico (A/C.6/63/SR.17), Indonesia (A/C.6/62/SR.25).